

IN THE MATTER OF MERCHANT MARINER'S DOCUMENT Z-1250653 AND ALL
OTHER SEAMAN'S DOCUMENTS

Issued to: Leonard L. DI GIROLAMO

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1871

Leonard L. DI GIROLAMO

This appeal has been taken in accordance with Title 46 United States Code 239 (g) and Title 46 Code of Federal Regulations 137.30-1.

By order dated 4 May 1970, an Examiner of the United States Coast Guard at Honolulu, Hawaii revoked Appellant's seaman's documents upon finding him guilty of the charge of "conviction for a narcotic drug law violation." The specification found proved alleges that on or about 28 June 1967, Appellant was convicted by a court of record, Superior Court of California for Alameda County of violation of a narcotic drug law of the State of California, section 11556 of the Health and Safety Code.

At the hearing, Appellant elected to act as his own counsel. Appellant entered a plea of guilty to the charge and specification.

The Investigating Officer introduced in evidence a copy of a record filed in the Superior Court for Alameda County.

In defense, Appellant offered an unsworn statement about the circumstances of the arrest which led to his trial and conviction.

At the end of the hearing, the Examiner rendered an oral decision in which he concluded that the charge and specification had been proved by plea. The Examiner then entered an order revoking all documents issued to Appellant.

The entire decision was not served until 29 September 1970, but appeal was timely filed on 1 June 1970 following the oral decision and was perfected on 5 November 1970.

FINDINGS OF FACT

On 28 June 1967, Appellant was convicted of violation of section 11556 of the California Health and Safety Code, a narcotic drug law, in the Superior Court for the County of Alameda, a court of record.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. It is contended that Appellant was denied his right to counsel in a criminal proceeding. It is also said that Appellant was denied due process since the Examiner did not know or understand the authority under which he was proceeding as evidenced by the fact he thought that since the charge was proved revocation was a mandatory order, thus overlooking the permissive word "may" in the statute.

It is also urged that Appellant's document should be returned to him in the light of a statement that he now makes as to his arrest and conviction and of an action taken by the Superior Court of Alameda County in setting aside the conviction under section 1203.4 of the California Penal Code on 1 June 1970.

APPEARANCE: Roy K. Yamamura, Esq., Hayward, California.

OPINION

I

These proceedings are not criminal in nature. As a result of a criminal proceeding a person may be fined or imprisoned or both. No such action can result from an action under 46 U.S.C. 239b which is a remedial proceeding undertaken to promote safety at sea predicated usually, as in this case on a criminal conviction already entered.

Despite this, Appellant had the right to counsel at the hearing. It is clear from the record that he was advised of this right at the time the charges were served on him and again when the Examiner opened the hearing four days later. Appellant expressly waived his right to counsel because, to paraphrase his words, the evidence was all right there. Although the Examiner counseled that a "not guilty" plea be entered and that counsel should be obtained, Appellant persisted in his plea. There was no denial of a right.

The Examiner did not misconceive his authority under 46 U.S.C. 239b. The permissive "may" operates only as to the judgment whether charges should be preferred and a hearing held. Once such a charge is proved, revocation is the only order permitted.

III

The action of the California court under P. C. 1203.4 did not expunge the fact of conviction from the record. It is true that this action was not obtained until after the instant hearing was

held, and was thus unavailable to Appellant when he was before the Examiner, but that fact is irrelevant. See Decision on Appeal No. 1746.

IV

Appellant's statement on appeal about the circumstances of his arrest for the narcotics offense was undoubtedly prepared with assistance, which is in no way reprehensible, including the incorrect identification of the arrest as having occurred in April or May 1969 while the conviction had been had in June 1967. In it, Appellant recounts that while working as a taxi driver he had befriended a young woman and had allowed her to stay at "my place." After Appellant returned from work after his night shift, it is said, he talked with the young woman for about thirty minutes "when the door opened suddenly and Oakland Police officers entered the room..." When Appellant consented to a search, the police found marijuana. Appellant says that he admitted that it was his because he saw that the girl was frightened. Appellant was arrested, he said, for possession of marijuana and harboring a runaway minor. Since Appellant was more apprehensive about the latter offense he made a deal with the police to confess to the possession of marijuana if they would drop the "minor" charge. which they did. however, Appellant says, he pleaded "not guilty" on arraignment on the possession charge, but just before trial, on advice of counsel that the girl had given a statement that the marijuana "in the apartment" was his not hers, he decided to plead guilty to a lesser charge of being in a place where narcotics were used. Standing by itself this statement would provoke some raised eyebrows.

However, Appellant has made two other statements in Coast Guard proceedings.

On 23 December 1969, in reporting the loss of his Merchant Mariner's Document and applying for a duplicate, Appellant said, as to details of his conviction, "Oakland, California - Approximately July 1967 - while in a hotel room the police raided the room and found marijuana."

At the hearing before the Examiner on 4 May 1970, Appellant described the incident thus:

"During the time that all this came about...I was not aware that any of these things were going on in my apartment room until I was therefor [sic] inside. About five minutes later, when the Investigating Officers were there, and I was involved in this situation which I didn't participate in...I went into the room at the specific time when the Investigating Officer came [presumably the Oakland police; definitely not the Coast

Guard Investigating Officer] so..." R-13.

This testimony is not particularly consistent with the statements made on appeal, but this is not the point. As was noted by the Examiner, in a proceeding under 46 U. S. C. 239b a judgment of a State court may not be collaterally attacked; it is conclusive.

ORDER

The order of the Examiner dated at Honolulu, Hawaii on 4 May 1970, is AFFIRMED.

C. R. BENDER
Admiral, U. S. Coast Guard
Commandant

Signed at Washington, D. C., this 24th day of March 1972.

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